

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:17-cv-00058-FDW-DSC

MONTEREY BAY-CHARLOTTE, LLC, and)
ARTHUR RUTENBERG HOMES, INC.,)

Plaintiffs,)

vs.)

ORDER

MATTHEW LEWIS; ANGELA LEWIS;)
PLATTNER CUSTOM BUILDERS, LLC;)
AND JOHN DOE d/b/a DESIGN BOARD)
PRODUCTIONS,)

Defendant.)

This matter is before the Court on the Motion to Dismiss filed by Defendant Plattner Custom Builders, LLC (“Plattner”). (Doc. No. 17). Plaintiffs responded in opposition to the motion (Doc. No. 19), and Defendant Plattner replied (Doc. No. 20). For the reasons that follow, the motion is DENIED without prejudice to re-raise the issue of subject matter jurisdiction in a dispositive motion following discovery.

In short, Plattner argues Plaintiff Monterey Bay-Charlotte, LLC, (“Monterey Bay”), does not have standing to sue Plattner for copyright infringement because Plaintiff Arthur Rutenberg Homes, Inc., (“AR Homes”) is the exclusive owner of the two copyrights at issue in this case: a “map and/or technical drawing” covering plans for a certain residence, as well as a copyright for the “architectural work” for the residence (collectively, “Registered Works”). Plattner further argues the Complaint fails to allege Monterey Bay is an assignee or exclusive licensee of the Registered Works at issue here. In response, Plaintiffs contend Monterey Bay is a franchisee of


AR Homes possessing the exclusive right to use the Registered Works and therefore has standing to bring this infringement suit on behalf of itself and AR homes.

After reviewing the Complaint, pleadings on the motion at bar, and applicable law, and construing the allegations in the Complaint in the light most favorable to Plaintiffs, the Court finds the Complaint to sufficiently allege both Plaintiffs have standing to pursue suit in this instance. This ruling, however, is **without prejudice** to Defendants' ability to challenge subject matter jurisdiction again following discovery should the evidence indicate Monterey Bay is not the legal or beneficial owner of an exclusive right under the Registered Works. Indeed, the Court notes discovery may change the existence of subject matter jurisdiction for either Plaintiff in this case.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (Doc. No. 17) is DENIED without prejudice. Defendant Plattner shall file an Answer to the Complaint no later than Monday, December 4, 2017. The parties are hereby ORDERED to immediately confer as required under Federal Rule of Civil Procedure 26, as well as the Local Rules and Standing Orders of this Court. The parties' Rule 26(f) certification shall be filed no later than Friday, December 2, 2017.

IT IS SO ORDERED.

Signed: November 27, 2017


Frank D. Whitney
Chief United States District Judge

